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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK E. CAVENEY

Appeal 2007-2478
Application 10/613,062
Technology Center 3600

Oral Hearing Held: November 14, 2007

Before WILLIAM F. PATE, III, MURRIEL CRAWFORD, JOSEPH A.
FISCHETTI, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

CHRISTOPHER S. CLANCY, ESQUIRE
Panduit Corporation
17301 South Ridgeland Avenue
Tinley Park, IL 60477-3091

The above-entitled matter came on for hearing on Wednesday,
November 14, 2007, commencing at 10:20 a.m., at The U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Deborah
Rinaldo, RPR, Notary Public.

1 PROCEEDINGS
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3 JUDGE PATE: Good morning, Mr. Clancy. We are up to speed on
4your case and we're ready to hear your argument.

5 MR. CLANCY: Good morning, Your Honors. There are two issues
6before the Board this morning, first, whether claims 7 through 9, 11 and 12
7and 20 to 24 are unpatentable under 103(a) over Blanks U.S. 5732446, in
8view of Andersen 6035495, and Sauer U.S. 4300270.

9 The second issue is whether claim 10 is unpatentable over 35 U.S.C. §
10103(a) over Blanks in view of Anderson and Sauer and further in view of
11Thurston U.S. RA 25769.

12 Independent claim 7 recites -- and I'll direct you to figures 2, 6 and 8
13as best for showing the return loop, includes at least one rib 38 disposed
14thereon. And claim 7 also defines the return loop as connecting the first end
15of the strap to the hooked portion of the strap.

16 I would like to first address the primary 103 reference, Blanks, the
17446 reference. Appellants agree with examiner that Blanks discloses all of
18the limitations of the claimed invention except for three things. One, the
19ribs 38 disposed along the return loop; two, the indentations at 36 and
20opposite sides of the locking head; and three, the lead-in portion 60 at the
21strap entry phase 48.

22 And I would like to focus the majority of my argument today on the
23ribs 38 along the return loop which is claimed in independent claim 7. And
24that is where the appellants disagree with the examiner's contention that
25Andersen 495 discloses using a reinforcing rib 13 on a return loop 12.

26 JUDGE PATE: Do you disagree that that's not a reinforcing rib or

1what?

2 MR. CLANCY: Well, initially I would -- it is a reinforcing rib, but I
3would contend that it does not -- juncture 12' as best shown in figures 1 or 2
4of Andersen is not a return loop that connects a first end of a strap to a hook
5portion of the strap.

6 But for purposes of this argument and I think to get to the guts of it,
7even if you were to assume that juncture 12' is a return loop, appellants still
8feel that Andersen teaches away from adding these reinforcing ribs 13 to the
9Blanks metal tie band.

10 JUDGE FISCHETTI: Aren't the forces acting on Andersen very
11much, if not, identical to the same forces acting at the juncture in Blanks?

12 MR. CLANCY: If you look -- to answer your question, they may be.
13There are definitely forces applying in Blanks at the return loop which the
14examiner has pointed out is 28, as well as forces at the juncture 12 prime in
15Andersen. But that's where the similarities end.

16 If you look at column 2, lines 62 to 65 of Andersen, it discusses tab 14
17has reinforcing rib 13, a cross juncture 12 to restrain tab 14 against bending
18when the clamp is tightened. Those ribs are added to prevent the clamp
19from being overtightened.

20 Now, on the other hand, in the applicant's invention, the stiffening ribs
2138 along the return loop do not restrain the strap 28 from bending when the
22strap is tightened.

23 In fact, if the strap 28 was restrained at all from bending or even
24excessive bending by the ribs, the cable tie itself would not work for its
25intended purpose. And that is one of the reasons why appellants contend
26that it would not be obvious to incorporate the reinforcing ribs 13 from

1Andersen into Blanks.

2 In fact, if you look at figures 2 and 6 in the present application, you'll
3see that the stiffening ribs, in essence, span approximately 180 degrees along
4the return loop. They sort of fold back upon themselves.

5 Whereas, on the other hand, in Andersen the reinforcing rib 13 is
6specifically intended to prevent tab 14 from folding back upon itself when a
7clamp is tightened. Again, the rib 13 there is to prevent overtightening of
8the clamp. And if that was not there implied from Andersen is that there
9would be this overtightening and a deformation of the tab 14.

10 JUDGE FISCHETTI: But there's still a concurrent use for that
11abutment. I guess rib 13 is to also serve to reinforce, right? It has two
12purposes, to keep overtightening and to keep that tab at a right angle, no?

13 MR. CLANCY: Yes. But I contend that they are in essence the same
14function. The reason it is meant to reinforce is to prevent it from
15overtightening. If it was not present at the juncture 12 prime, the clamp
16would deform and thus the clamp itself would overtighten.

17 JUDGE FISCHETTI: Let's just say on an oversized pipe at some
18point where a diameter of that pipe was going to be so large that I could
19never get to the point where element 13 would effectively create the
20abutment that it needs to prevent overtightening. But still at some juncture
21that element is going to serve as a reinforcement, correct?

22 MR. CLANCY: You are correct.

23 JUDGE FISCHETTI: So you can basically separate out the two
24functions in a scenario where just preventing the member from being ripped
25apart by use of that reinforcement, right?

26 MR. CLANCY: Potentially, yes. That does not appear to be taught

1by Andersen. I would contend that there is not really a suggestion for just
2applying that rib, you know, to any other device.

3 Even if you were to say, okay, this reinforcing rib 13 could be applied
4to the metal tie band in Blanks like the examiner has done in this case, well,
5do you put it in the return loop? Do you put it on the locking head? Maybe
6you put it on the first end of the strap.

7 There is a lot of considerations that go into where you would put the
8rib. So I mean, there's nothing in Andersen that would lead one to believe
9that, yes, you have to put this on the return loop or the locking head or the
10first end of the strap.

11 In its broadest sense it is a return rib, but there is no -- I understand
12under KSR there are different delineations for -- it's not a teaching
13suggestion or motivation, but there still has to be some impetus to combine
14one reference with another.

15 JUDGE FISCHETTI: Why not common sense telling you at the place
16where you would first expect pull out from the pressures attendant to
17clamping?

18 MR. CLANCY: The first place you may consider would possibly be
19on the locking head itself because once the strap is tightened, that's arguably
20your first point of failure. It could be the return loop. It could be the locking
21head.

22 A lot depends on the force that is applied and the tensile strength.
23That's, I guess, part of my point. I don't think it is common sense or intuitive
24that, yes, you have to put it on a return loop.

25 You look at Blanks and other cable type -- cable type patents starting
26with bale ties for cotton have been around since, I believe, the late 1800s,

1early 1900s. So this art is very old and very established.

2 But yet at no point has it been disclosed anywhere in a cable tie
3reference to put a rib on the return loop on the locking head or even the first
4end of the strap. There is different features on here and I would contend that
5that goes a long way towards why it would not be obvious to one of skill in
6this art.

7 To an outsider just looking at these two references, this, this, put this
8there, you know, yeah. But that's not the test here. It's what one of ordinary
9skill in the art at the time of this invention was made would be taught or
10motivated by Blanks in combination with Andersen.

11 It's appellant's position that, yes, Andersen does disclose a reinforcing
12rib 13, but there would not be a motivation or any impetus to put this on the
13metal tie of Blanks at the return loop even if there was a motivation to put it
14somewhere on there, which, okay, for purposes of argument, you want to
15reinforce it, you want to strengthen it.

16 It's generally known use stiffening ribs, reinforcing ribs, et cetera.
17But where to put that, there is no impetus or motivation in Andersen that it
18should be applied to the return loop.

19 JUDGE PATE: Let's go on to your second issue.

20 MR. CLANCY: Sure. Claim 10 -- actually, can I address -- I guess,
21to address claim 10 where it says the strap is coated, appellant's -- claim 10
22will stand or fall with independent claim 7. So I would like to address
23dependent claim 9, if I could.

24 JUDGE PATE: Okay.

25 MR. CLANCY: Dependent claim 9 requires a locking head 24
26including a lead-in portion 60 at the strap entry phase. And if you look at

1figure 2 in Blanks, the examiner contends that reference numeral 28 which
2he's identified as the return loop includes a lead-in portion.

3 There is not a reference numeral applied to that. Presumably it would
4be the surface above 21, which 21 just defines the strap receiving
5passageway.

6 If you would compare that to figures 10 through 13 in applicant's
7invention, if you look at the right side of the drawing, the lead-in portion 60
8is different than what's defined as a strap passageway 21 in Blanks.

9 You'll see, for example, in figure 11 where the cable tie head comes
10down, levels off and then ramps up at lead-in portion 60.

11 That lead-in portion speeds installation of cable ties because it allows
12the tip to be grabbed even if installed at a steeper angle. If it's not coming in
13parallel to a lead-in portion, but say at 45 degrees, it can still catch or be
14caught by the lead-in portion.

15 JUDGE PATE: Claim 9 just says the lead-in portion, though, right?

16 MR. CLANCY: I believe it says at the strap entry.

17 JUDGE PATE: It has a location, but it doesn't have any of this stuff
18about ease in putting it together or guiding it in or anything.

19 MR. CLANCY: No. It just says lead-in portion at the strap entry
20phase. That's correct. Whereas in Blanks, the 21 would presumably be the
21strap entry phase and there is not shown a lead-in portion there.

22 There is no discussion in Blanks of the need for one or desire for one.
23That was what the examiner relied on for that feature. So appellants would
24contend that that feature is not shown and dependent claim 9 is separately
25patentable.

26 Are there any other questions this morning, Your Honors?

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1 JUDGE PATE: No questions here. We'll take this case under
2advisement. Thank you for your presentation.

3 MR. CLANCY: Thank you for your time this morning.

4 (Whereupon, the proceedings at 10:33 a.m. were concluded.)